

September 21, 2015

Brian Butler
Office of Engineering and Technology
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Reference: ET Docket No. 15-170; RM-11673; FCC 15-92

Dear Mr. Butler,

The National Customs Brokers and Forwarders Association of America (NCBFAA) is pleased to provide the following comments in response to the above-referenced notice of proposed rulemaking.

NCBFAA is the association that represents licensed customs brokers. Our members provide the important and unique perspective of intermediaries who serve as the interface between importers, Customs and Border Protection (CBP) and other government agencies.

We agree with your decision to eliminate the filing of FCC Form 740 (Import Declaration) at the time of entry, as discussed in Paragraph 69 of the proposed rule. At its inception, the purpose of Form 740 was to provide information in order to prevent unauthorized radiofrequency (RF) devices from entering U.S. commerce. At the time, fewer than 100 forms a month were filed, compared to an estimated 2 million annually today. By 2020, an estimated 26 billion devices may be subject to FCC jurisdiction as the Internet of Things expands, making the Form 740 filing a burdensome requirement that appears to us to yield few enforcement benefits for the FCC.

As you point out, much of the information on the Form 740 is already filed with CBP as part of the entry process. Its continued usefulness as an enforcement tool in today's environment is questionable and as stated in the proposed rule, "...the Internet provides a much more effective enforcement tool. Most equipment is advertised or available for sale on the Internet, and there is often a wealth of information available as to the supplier of the equipment."

While we generally support this proposed change to the Form 740 filing requirement, the proposed wording of the new regulatory language creates new compliance issues. Currently, 47 CFR 2.1203(a) reads:

"No radio frequency device may be imported into the Customs territory of the United States unless the importer or ultimate consignee, or their designated customs broker, declares that the device meets one of the conditions of entry set out in this section." [Emphasis added.]

Currently, the importer (who generally is the U.S. owner of the goods or the ultimate consignee) makes this declaration, providing the required information to the customs broker, who then transmits the Form 740 information electronically as part of the entry submitted to CBP. The customs broker does so on behalf of his client, the importer, using the specific information provided by the client. There is one identifiable party who takes responsibility: the party that makes the declaration, i.e., the importer.

The new proposed rule marks an important shift in FCC's approach. No particular FCC-specific declaration or filing is required. The proposed new 2.1203, however, does not accurately capture this shift. Without a declaration to affix responsibility in each instance, it will be unclear exactly who made the determination. The proposed language reads:

"No radio frequency device may be imported into the Customs territory of the United States unless the importer or ultimate consignee, or their designated customs broker, determines that the device meets one of the conditions of entry set out in this section." [Emphasis added.]

"(c) *Whoever makes a determination* pursuant to Section 2.1203(a) must provide, upon request made within one year of the date of entry, documentation on how an imported radio frequency device was determined to be in compliance with Commission requirements." [Emphasis added.]

With this new approach, where no one party is making a declaration that is filed at the time of entry, it becomes critically important that the "determining party" be explicitly identified and known at the time of entry. Otherwise, how will the FCC know who made the determination? How will they know who has the documentation when making a request for further information within a year after entry? If the responsible party for making the determination could be any of three entities (i.e., the importer, the ultimate consignee or the customs broker, as the proposed regulation suggests), there is no certainty for the FCC or the trade as to which party is responsible for documenting how the radio frequency device was determined to be in compliance. This leaves a potentially significant gap in affixing responsibility.

Moreover, a customs broker should not be one of the potential parties named as being responsible for "determining" whether the product meets FCC technical requirements. A customs broker is not in a position to make such a "determination." Although customs brokers play an important role in facilitating the entry of goods into the U.S., we do not have the necessary knowledge of the product's design or manufacture to render such a judgment. We can transmit a declaration with information provided by the importer, but our limited role as an intermediary does not give us the capability to make a determination about the technical aspects of a product. It would therefore be counterproductive to the FCC's goals to expect a customs broker to fulfill this role.

Role of the Customs Broker: A customs broker is not an importer. Confusing the two is like confusing the travel agent with the traveler. A customs broker is licensed by the U.S. Customs and Border Protection (CBP) to transact "customs business" on behalf of third parties. We prepare the paperwork and electronically transmit the declarations made by our client, the importer (who is generally the U.S. owner of the goods or the ultimate consignee), using a high standard of care and reasonable due diligence. But we do not own the product and only on rare occasions do we even lay eyes on the merchandise.

As thousands upon thousands of customs entries are processed daily, our understanding of the transaction and knowledge of the specifics is necessarily based on the representations of our client and is generally limited to information related to the movement of the merchandise rather than its technical specifications. In the ordinary course, customs brokers simply do not receive sufficient information about the product which would enable them to independently opine about the FCC specifics of the product. Customs brokers also lack the technical training which would make them knowledgeable resources for this type of information.

It is important for the FCC to recognize this distinction between the importer and the filer: as filers, we are responsible for the accurate *transmittal* of the data; while our client, the importer, is responsible for the accuracy of the data on the declarations that they provide to us.

It is even more important that the customs broker/filer not be identified as a party responsible for determining product compliance since we understand that the FCC will no longer issue tariff-based flags to alert the filer that the product is or may be subject to FCC requirements. A filer will not have knowledge of the device or the need for FCC compliance.¹ Yet, under the proposed Section 2.2103(a), the customs broker could be considered the "determining" party, particularly on those occasions when he serves as the nominal importer-of-record.

NCBFAA Recommendation: NCBFAA strongly recommends that the proposed Section 2.1203(a) be changed to eliminate the words "or their designated customs broker". The resulting regulation would read as follows:

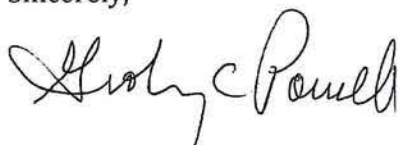
"No radio frequency device may be imported into the Customs territory of the United States unless the importer or ultimate consignee determines that the device meets one of the conditions of entry set out in this section." [Emphasis added.]

This would place responsibility on the party with the requisite knowledge and information to make this determination, providing greater certainty and more effective enforcement.

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Thank you for this opportunity. Please let us know if NCBFAA can provide further information.

Sincerely,



Geoffrey C. Powell
President

¹ For example, a ski jacket is ordinarily not thought of as an FCC-regulated product. However, if it contains an RF device in the lining to act as a beacon during an avalanche, then it is subject to FCC requirements. The customs broker/filer may very well not be aware of the RF device in the lining or the need for FCC compliance.